

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 996 of 1998
with
CRIMINAL APPEAL No 1067 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHANDUBHAI BHIMABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 996 of 1998
MR PM THAKKAR, SR. ADVOCATE for M/S THAKKAR ASSOC.
for Petitioner No. 1
MR AY KOGJE APP for Respondent No. 1
 2. Criminal Appeal No. 1067 of 1998
MR AY KOGJE APP for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
-

CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE M.S.SHAH

Date of decision: 29/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. These two appeals are disposed of by this common order as they are arising out of the impugned judgment and order dated 19.9.1998 passed by the learned Additional Sessions Judge, Junagadh convicting the appellant-accused No.4-Chandubhai Bhimabhai for the offence under Section 302 IPC and sentenced him to suffer life imprisonment and to pay fine of Rs.2,000/= in default to undergo simple imprisonment for 8 days. However, acquitting the remaining accused of Sessions Case No.41/96 for the major offence under Section 302 IPC.

#. Criminal Appeal No.996/98 is filed by the appellant-accused No.4-Chandubhai Bhimabhai whereas Criminal Appeal No.1067/98 is filed by the State against the remaining accused.

#. It is the case of the prosecution that on July 10, 1995 at about 6.30 a.m. accused No.4-Chandubhai Bhimabhai with other accused formed unlawful assembly with a common object of committing murder of Nanji Rana of village Sarsai, near Gedia Vokla at the outskirts of village Sarsai of Visavadar taluka, Junagadh district. It is further the case of the prosecution that one Bhikhabhai Nanjibhai PW-3 who also belongs to Scheduled Caste of "Harijan" accompanied the deceased-Nanji Rana and witnessed the incident of beating Nanji Rana by the accused with deadly weapons like spear, dharia, etc. During the incident, he had also received some minor injuries however, somehow or the other he managed to escape from the place of incident and reported about the incident to one Manubhai Bhikabhai, who in turn informed about the incident to one Vitthal Teja. Thereafter, Manubhai PW-7 and Vitthal Teja PW-8 went to the scene of offence. The deceased narrated to them the incident. They took him to Visavadar hospital in jeep and Dr.Girish Kumar PW-1 examined the deceased-Nanji Rana and declared him dead. Thereafter, at about 8.30 a.m. injured Bhikhabhai Ex.44 came to the hospital for treatment. The doctor examined him and found that he had four minor injuries. Police came to the hospital and recorded FIR of Bhikhabhai Nanji at Ex.45 at 10.15 a.m. Thus, within

less than a period of four hours of the incident, the FIR came to be lodged wherein injured Bhika Nanji disclosed the names of the assailants with the weapons used by them. The distance between the scene of offence and the hospital was about 7 km.

#. After completing the investigation, the police filed charge sheet against all the 13 accused for the offence under Section 302 IPC read with Sections 147, 148, 149 and under Sections 324, 323 IPC. Learned Judge framed charge against all the accused for the aforesaid offences along with the offences punishable under Section 135 of the Bombay Police Act as well as under section 3(1)(10) of the Scheduled Cast and Scheduled Tribe (Prevention of Atrocities) Act (for short "the Act"). All the accused pleaded not guilty to the charge levelled against them and claimed to be tried.

#. The prosecution examined several witnesses, including solitary eye witness Bhikhabhai Nanji PW-3 Ex.44 and also tried to rely upon documentary evidence viz. Post Mortem notes, inquest panchnama, panchnama of scene of offence, etc., After considering the oral as well as documentary evidence led by the prosecution the learned Judge came to the conclusion that the prosecution has proved its case beyond reasonable doubt against the accused No.4-Chandu Bhimabhai for the offences under Section 302 IPC for committing murder of deceased-Nanji Rana. Accordingly, the learned Judge sentenced him to suffer life imprisonment and to pay a fine of Rs.2,000/= in default to further undergo SI for 8 days. He also convicted accused No.1-Vitthal Popat and accused No.2-Vinubhai Vitthal and accused No.8-Jaman Popat for the offences under Section 324 IPC and separate order of sentence was passed by the learned Judge. However, all the accused and other accused were acquitted by the learned Judge for the major offence under Section 302 IPC, except Accused NO.4-Chandubhai Bhimabhai. For convicting the accused No.4-Chandubhai Bhimabhai for the offence under Section 302 IPC the learned Judge has mainly relied upon the evidence of solitary eye witness Bhikhabhai Nanji, PW-3 Ex.44.

#. Learned Senior Advocate Shri Thakkar for the appellant-accused Chandubhai Bhimabhai vehemently submitted that in the instant case there is only one eye witness-Bhikha Nanji PW.3 Ex.44. He is a chance witness, therefore, his evidence is required to be closely scrutinised as it does not inspire confidence. He submitted that though the incident alleged to have taken place at an early morning hours of 6.30 a.m., FIR Ex.45

was lodged by complainant-Bhika Nanji only at 10.15 a.m. on the day of incident wherein he was taking treatment at Visavadar hospital. Prior to that the police had already reached the scene of offence and panchnama was also prepared between 8.15 a.m. to 9.15 a.m. He submitted that if the accused persons wanted to finish deceased-Nanji Rana, who was the eye witness against them in another case, then they would not have spared Bhikha Nanji, who claimed to have witnessed the incident. Then, Mr.Thakkar further submitted that FIR was lodged after 3 hours 45 minutes of the incident by Bhikha Nanji and not immediately after the incident. He submitted that there was an ample opportunity to Bhika Nanji to involve as many as accused possible with the weapons and the role played by each of them. He submitted that the complainant had lost one eye and that his hearing was impaired. The incident in question alleged to have taken place at early morning hours of 6.00 to 6.30 a.m. and in absence of light it would be extremely difficult for the complainant to identify as many as 13 accused persons. He further submitted that in Chapter Case No.102/95 application Ex.46 dated 20.11.1995 was given by him wherein he had stated that mob of about 12 to 15 persons assailed Nanji Rana (deceased). It was early morning hours time and because of darkness he was not in a position to identify any of the assailants and Bhikha Nanji at the instance of Manubhai Bhikhabhai (Ex.53) lodged the FIR and also gave names of all the accused. He submitted that the complainant had no reason to stay in the field overnight. At one point of time he stated that he had gone to guard fields and later on stated that he was not doing any agricultural operation but only doing labour work and repairing shoes. When he had gone to guard fields he had no weapon with him. Such conduct is absolutely unnatural. He further submitted that complainant-Bhikha Nanji, who claims to have witnessed the incident is a court bird against whom many Criminal Cases have been registered. There is nothing on record to corroborate the say of the complainant-Bhikha Nanji that the incident took place at 6.30 a.m. He submitted that the injuries on the person of complainant-Bhikha Nanji are of trivial nature and such injuries may be found on the person of all agriculturists. Injury Nos.1, 3 and 4 are regarding pain, whereas only one injury No.2 was possible by fall. At one breath he stated that deceased was assailed and because of that he fell down and, thereafter, he (complainant) escaped. Later on he improved his version and stated that injuries were also caused to him. He submitted that he has tried to involve as many as 13 accused including two lady accused out of which accused Nos.2, 5, 6, 7, 9, 10, 11, 12 and 13

alleged to have hard and blunt substances like Iron-T, sticks, etc., but no injury with hard and blunt substance was found on the body of the deceased. The learned Sessions Judge has also not believed the version of the complainant qua the accused persons, who were having hard and blunt substances. He submitted that the conduct of the complainant-Bhikha Nanji was also unnatural as he had not informed about the incident to the relatives of the deceased. He had first gone to Manubhai Bhikhabhai's house and informed about the incident, but there also he had not given the names of the accused. The complainant did not go to hospital first though he had received some injuries on his person and sat idly in bazar for about one hour and not told about the incident to any one. Even before the doctor he narrated that there was "mara mari" or scuffle but he had neither given detailed version before the doctor about the incident nor disclosed the names of accused as assailants.

#. Mr.Thakkar further submitted that as per the evidence of complainant the deceased was assaulted with sharp edged weapons near "chokdi" and the deceased fell down at that place. However, no blood stains were found near that place and the blood stains were found at three distant places. He, therefore, submitted that the evidence of the Bhikha Nanji is wholly unreliable, therefore, his evidence be discarded and the accused be acquitted by giving benefit of doubt to him.

#. However, learned APP Shri Kogje for the respondent-State of Gujarat submitted that there is nothing on record to show that hearing of complainant-Bhikha Nanji was impaired. He submitted that though the complainant had one eye, he could see the incident by turning his face from one side to another. He submitted that there was a distance of nearly 7 kms. between the scene of offence and hospital where FIR was registered and delay of three hours and 45 minutes cannot be said to be a gross delay for discarding his evidence. About the application Ex.46 dated 20.11.1995 submitted by the complainant-Bhikha Nanji before the Executive Magistrate, Mr.Kogje submitted that the witness had simply signed typed statement under threat and his explanation was rightly accepted by the learned Sessions Judge for relying upon his evidence. He submitted that complainant can never be a chance witness because the averments made in Ex.46 also shows that he was present along with deceased-Nanji Rana at the scene of offence and in his presence a crowd of 12 to 15 persons assailed Nanji Rana. Thus, his presence cannot be ruled out from the place of the incident. He further submitted that

though there may not be standing crop in the field, but agriculturists have to guard their fields in the night and, therefore, if the witness-Bhikha Nanji had gone along with Nanji on the previous night to the field, then it cannot be said that by chance his presence was there. He submitted that when there was no standing crop then, there was no need for either deceased-Nanji Rana or witness Bhikha Nanji to have weapons with them. He submitted that the complainant frankly stated that just two months before the incident, he was doing labour work of repairing shows. But thereafter in partnership of deceased-Nanji he was cultivating the fields of Manubhai. He submitted that merely because some criminal cases were filed against him that itself should not be a ground for discarding his evidence. He further submitted that complainant-Bhikha Nanji received as many as four injuries at the time of incident, while escaping from the place of incident. Those injuries may be minor but there is nothing to show that those injuries were self inflicted. Merely because the doctor has said that injury No.2 was possible by fall that would not be sufficient to discard his evidence. He further submitted that merely because Bhikha Nanji had not informed about the incident to the relatives of the deceased and that he had straightway gone the house of Manubhai Bhikhabhai and informed about the incident should not be a ground for discarding his evidence. His conduct cannot be said to be unnatural. He must have been frightened having seen such murderous assault on deceased-Nanji Rana and because of that he might have thought it fit to first go to Manubhai Bhikhabhai and informed about the incident and, thereafter, while taking treatment in the hospital if the police has recorded his FIR then it cannot be said that his conduct was unnatural. He submitted that finding of pair of his shoes at the place of incident also suggest his presence at the time of incident and the incident happened in month of July at 6.30 a.m., therefore, there would be sufficient visibility to see the actual incident and the accused who assaulted deceased-Nanji, with the weapons in their hands.

#. He had further submitted that when learned Sessions Judge has partly relied upon the evidence of complainant-Bhikha Nanji for convicting four accused under Section 324 IPC, and convicted appellant-accused-Chandubhai Bhimabhai for the major offence under Section 302 IPC, then he should have also relied upon his evidence for convicting other accused. He, therefore, submitted that there was a common object of all the 13 accused to kill Nanji Rana so that he may not depose against some of the accused in other cases.

He, therefore, submitted that his appeal against order acquitting the remaining accused for the major offence under Section 302 IPC be allowed and all the accused be convicted and sentenced accordingly.

##. Before appreciating the rival contentions raised by the learned counsel for the parties, we would like to reproduce the material part of the evidence of solitary eye witness-Bhikha Nanji in nutshell, which is as under:-

"He stated in his Chief that at the time of incident he was staying at village Sarsai. The incident in question took place two years before. He had no agricultural land. He kept land of Manubhai in the partnership of deceased-Nanji Rana for the purpose of cultivation. At the time of incident there was sowing of "mandi" and "wheat" in the field. On the previous evening of the incident they had gone to their field and stayed there overnight in a kuchha room in the field. In the early morning hours at about 6.30 a.m. he and Nanji left wadi for coming to their home. When they came near "Gedia Hokla", at that time accused-Vithal Popat, Vinubhai Vithal and Chandu Bhima have spears in hands. Jaman Popat had dharia and other accused Velji Tapu, Kishore Tapu, Kanji Tapu, Bharat Shamji, Vinu Gova, Nathaben wife of Bhimabhai, in all 13 accused were there. Accused Bharat Shamji has stick in his hands and rest of the accused were having Iron-T. They were hiding themselves in pits. As soon as they reached there all of them came out from the pits (chowkdis). Accused Vithal told Nanji that, he is witness in their case, if he is alive then only he will speak " by saying this he gave spear blow on the neck of Nanji. Accused Vinu Vithal has also spear. He gave spear blow on the waist of Nanji. Accused-Chandubhai Bhimabhai gave spear blow on the stomach of Nanji, Jaman Popat gave dharia blow on the head of Nanji. Other remaining accused were also beating Nanji with the weapons in their hands. He was frightened and standing at a short distance. Wife of Bhima and wife of Jamanbhai pelted stones on him. Because of that he received injuries on his right knee and forehead. Accused-Dinesh Bhima had given blow on his above right eye with Iron-T. He also gave blow to Nanji because of that he fell down. As he was beaten he escaped from the place of incident and went to the house of Manubhai in the village and

told him that the accused were beating Nanji. Thereafter Manubhai Vithal and Nanjibhai had gone to the place of incident in the jeep. They removed Nanjibhai to Visavadar hospital. He sat near the house of Vithalbhai thereafter Vithalbhai came with jeep and took him to Visavadar hospital. There he came to know that Nanji died due to beating. Earlier an incident took place before 10 months where Manubhai was beaten and a case was registered against Vithal. Deceased Nanji Rana was witness to that incident. On 1st May when he was repairing shoes and chappals at that time Vinubhai was going with his buffalos and they tried to chew leather which was kept for repairing, therefore, he scolded him because of that Vinubhai had left at that time but came at about 9.00 p.m. with Vithal Popat, Vinu Vithal, Jaman Popat and Chandu Bhima went to house and gave kicks and fist blows. At that time Nanji Rana came, therefore, all of them had gone away. He had lodged complaint about the same wherein Nanji Rana was witness. Ex.45 is the FIR lodged by him. He had identified his shows, (Article No.4) which were found at the place of incident, while running away from the place of incident.

In his cross-examination, he admitted that about this very incident Visavadar Police had filed Chapter Case against the accused in the court of Executive Magistrate wherein he was the complainant. However, he denied the fact that he had given any application dated 20.11.1995 (Ex.46) before the court of Executive Magistrate, Visavadar to withdraw the Chapter Case. When he was shown application dated 20.11.1995 for withdrawal of the Chapter case, he has simply admitted the signature below the application and stated that his signature was obtained on it under threat and duress. However, he has denied the contents of the application Ex.45 wherein he had stated that "on the day of the incident I and Nanji were coming from wadi, at that time a crowd of about 12 to 15 persons assaulted Nanji Rana. He was sitting in vokla for answering call of nature. It was early morning hours, therefore, due to darkness he could not identify anyone. On the stone being hit, he ran away from the place of incident and went to Sarsai and informed about the incident to Manubhai and Vithal Teja. They all had gone to the place of incident where they

found Nanji Rana dead in blood pool. Thereafter, Manu Bhikha and Vithal Teja told him to lodge FIR against all the members of Kachadia family by giving their names. Therefore, I had given names at the instance of Manu Bhikha. But, in fact, I had not identified anyone. Complaint was not read over to me and I do not know what is stated in the complaint. In view of the above facts, I do not want to continue with the chapter case, therefore, appropriate order be passed (Ex.46)."

He had produced photostat copy of the application Ex.46. He had further stated in his cross-examination that in the chapter case, he was called once or twice but his evidence was not recorded and only dates were given. He does not know the result of the chapter case. He had admitted in his cross-examination that he had not lodged any complaint either before the police or the court that writing on the application Ex.46 was obtained forcibly from him.

He was staying in Sarsai village for almost 15 to 17 years prior to the incident against him one criminal case was filed at Sarsai and two offences were registered at Junagadh under the Prohibition Act. He admitted that case was filed against Patel Bachu Nanji and Manubhai Nanji in Visavadar Police, but he does not know about the result of the same. He admitted the fact that he had filed case against Manu Nanji in police station. But he does not know that police had asked for "B" Summary from Visavadar Magistrate on the ground that complaint was false. He admitted the fact that against him and one Ada Naran case was filed for speaking filthy abuses in public place, which was registered at Visavadar Police Station where they were fined. He admitted that he is in know of the fact that civil case is going on between Tapu Bhura and Manu Bhikha regarding their land in Visavadar Court. But, he has denied the suggestion that he had not filed affidavit in favour of Manu Bhikha in the civil case. In his cross-examination he has initially stated that when Nanji Rana was assaulted he had not raised any shouts and he was standing there because he was frightened as he was frightened he had escaped from the place of the incident. He also stated that he was beaten, therefore, he ran away and accused did not come near to him but pelted stones at a short

distance. Immediately, thereafter, he stated that the accused came near to him and gave blows with the weapons in hands. However, he had not received any bleeding injuries. But, there was a swelling on his forehead and knee. When he reached the house of Manubhai he met several ladies on the road, but he was not knowing them. He admitted the fact that he did not disclose names of accused to Manubhai Bhikhabhai, but he had only told Manubhai that "Kachadiya people were beating Nanjibhai". They continue beating Nanji Rana, therefore, he ran away from the place of the incident. He could not say whether Nanjibhai was further assaulted or not after he left. When he had gone to the house of Manubhai at that time his brother Tarsi Bhikha was also present. Police recorded the FIR at the hospital. He stayed at Visavadar till 8.30 p.m. and, thereafter he was sent to Junagadh hospital.

In para 9 of his cross-examination he has

stated that apart from the assault on Nanji Rana with spear and dharia, other accused i.e. Velji Tapu, Kishore Tapu, Kanti Tapu, Dinesh Bhima, Vinu Gova, Bharat Shamji gave about 10 blows to Nanji Rana with the weapons in their hands. However, he had not seen any injury being caused to Nanji Rana for the stones pelted by wives of Bhikha and Jamanbhai. He had gone to Junagadh Hospital in the night and stayed there for about 4 to 5 days. Thereafter he had gone to Sarsai. In para 10 of his cross-examination he stated that when he was brought to Visavadar Hospital in jeep by Vithal Teja about 100 to 150 persons must have collected at the hospital but nobody from his family was present. However, family members of Nanji Rana was present at the hospital. He has admitted that prior to this incident he had strain relation the with the accused-Vitthal Popat. He has clearly denied the suggestion that he had not witnessed the incident and he had not received any injuries during the incident. He has further denied the suggestion that due to personal animosity and at the instance of Manu Bhikha and Vithal Teja he has given false complaint against the accused.

He has denied the suggestion that on the

day of incident there was an occasion of "Simant" at the place of Chandu Bhima. He had admitted the fact that when he was child a case was filed

against him in Juvenile Court for committing "theft" in cooperative society at Gujaria. Since then he left Khambalia. He has admitted the fact of filing case under the Prevention of Atrocities Act against Chandulal Chotalal priest of Ramji Temple of Sarsai. He had dispute with Gosabhai of Ingorala regarding land but no case was filed by him for that. He has denied the suggestion that in the month of May he had no agricultural work, therefore, he was doing nothing. He stated that he was earning about Rs.30 to Rs.50 as a cobbler by stitching shoes and chappals. He has denied the suggestion that he has no share in the land of Manubhai. According to him he was having 1/3rd share. They had to protect their fields from animals for which no weapon was kept by them. He has stated that there is no fixed time for going to wadi in the night. He has admitted the fact that for coming back to village from wadi no time was fixed. He has admitted the fact of not stating in his FIR that "we are beaten and Nanji continued to be beaten and you go". He admitted that there is an outpost police station at Sarsai with telephone, but neither he nor Vithal informed about the incident at Sarsai outpost where there is a telephone. He came to know about the death of Nanji after he lodged FIR. He has admitted the fact that because he has problem with his right eye he has to either turn his face or himself to see anything. He was conscious that about such serious incident he should inform the village people within one hour but as he was afraid, therefore, he sat there. He has also admitted the fact that Harjanvas was nearer to the place of incident than the house of Manubhai Dobaria. He denied the suggestion that Manubhai told him to give information about any incident to him first. He did not think it proper to inform about the incident to the relatives of the injured. In his cross-examination, he stated that they reached wadi at Mansa at about 9.00 to 9.15 p.m. and after reaching wadi they slept in kacha room. They got up at about 5.00 a.m. on the next day. He has denied the suggestion that he was telling lies about his shows either removed by him or fell at the place of incident. He has denied the suggestion that Muddamal shows are not his shoes.

##. From the above evidence in Chief and Cross examination of injured eye witness-Bhikha Nanji one thing

is clear that during the incident his presence cannot be ruled out. The very fact of Bhikha Nanji receiving four injuries, which may be of minor nature proves that he had received injuries at the time of incident for which he was treated within less than two hours at Visavadar hospital. Seeing the crowd of 13 persons beating Nanji with deadly weapons like spear, dharia, Iron-T, sticks, etc. Bhikha Nanji must have tried to save himself where he was also tried to be assaulted. In that process his shoes must have come out while running away from kacha road. Panchnama of scene of offence was recorded at about 8.15 a.m. i.e. within less than two hours and shoes of Bhikha Nanji were recovered which were duly identified by Bhikha Nanji in his evidence. The injuries received by him was duly corroborated by the evidence of Dr.Girish Kumar Koladia of Visavadar PW-1 Ex.33 and another Dr.Surendrakumar of Junagadh PW.18 Ex.72, who examined Bhikha Nanji at about 9.00 p.m. in Junagadh hospital. Even from the application dated 20.11.1995 Ex.46 alleged to have been submitted by Bhikha Nanji before the court of Executive Magistrate, Visavadar, which is bearing his signature itself proves the fact that he was present at the time of incident when crowd of 12 to 15 persons started assaulting Nanji Rana. Thus, his presence at the time of commission of offence cannot be ruled out.

##. Once, we come to the conclusion that the presence of injured witness-Bhikha Nanji at the time of commission of incident is not ruled out, then we have to consider his testimony with extra caution because of the enmity with the accused persons. Enmity is a double edged weapon. It cuts both the ways. More particularly when there is a solitary eye witness, then we have to be more cautious while considering his evidence before the court.

##. Admittedly, as per his evidence he was at a distance of about 15 ft. when the accused started assaulting Nanji Rana. It was early morning hours of 6.30 a.m. and in the month of July, which is monsoon season there may not be clear visibility for a person to identify the accused with the weapons in their hands and giving blows to the victim on his person, when he has only one eye. Considering the back ground of the accused viz. that number of criminal cases were registered against him since his childhood and that he had not even spared the Mahant of Ramji Temple, then his evidence is required to be tested with extra caution. If he had identified persons, who were assaulting Nanji Rana in his presence, then the first thing he would have done to inform about the incident to the nearest police station, which was at

Sarsai outpost itself where there was a telephone. But, admittedly he had not gone there. It is surprising that instead of informing about the incident to the relatives of the victim-Nanji Rana he had gone to the house of Manubhai Bhikhabhai. There also he simply stated that Kachadiya people were beating Nanji Rana and, thereafter he had gone to Visavadar hospital for taking treatment where his FIR was registered at 10.15 a.m. and for the first time he had given the names of all the accused with the weapons and the role played by them. The possibility of falsely involving the accused cannot be ruled out because the deceased had in all received seven injuries and one of which was vital i.e. stomach injury, which was possible by spear which was alleged to have been given by appellant-accused No.4-Chandubhai Bhimabhai. However, as per the evidence of Bhikha Nanji apart from spear and dharia blows other accused also gave at least 10 injuries, which he had seen. He left the place of incident when beating continued that means that few more blows must have been given by the accused but still only seven injuries were found on the body of the deceased. Under the circumstances, possibility of Manubhai Bhikha tutoring him to falsely involve the accused cannot be ruled out. It is significant to note that after meeting Manubhai Bhikhabhai for the first time, he disclosed the names of the accused, which is clear from the typed copy dated 20.11.1995 Ex.46 submitted in Chapter Case No.102/95. Bhikha Nanji initially denied having made such application, but later on he had to admit his signature below that application. He has tried to explain his signature by saying that he was threatened, therefore, he had signed such application. When asked whether he complained about this either to the court or the police. He said "No". Learned Sessions Judge accepted the explanation offered by Bhikha Nanji that under threat he had signed application Ex.46, therefore, he relied upon his evidence for convicting the accused. However, in our considered opinion no reliance can be placed upon the evidence of such person, who is at first instance not disclosing the names of the accused to the witnesses and later on disclosing the names of the accused before the police. Though he was cited as one of the witnesses in chapter case he did make a statement in a typed application Ex.46 that he had not seen the accused, the said application was duly signed by him. Though he signed such application he never complained either before the Executive Magistrate or before the police or any other authority that under threat or duress he had signed that application Ex.46 till he deposed before the court after a period of almost 2 years. In that view of the matter, it is difficult for us to

believe that either under threat or duress he had signed such application Ex.46. His evidence was recorded in 1997 almost after two years , therefore, in our considered opinion the learned Judge was wrong in accepting the explanation offered by Bhikha Nanji that under the threat he signed that application Ex.46.

##. From the evidence of Bhikha Nanji it is clear that he was on animus terms with the accused side and he had very good relation with Manu Bhikha. Admittedly there were two groups of "Patel" fighting each other; one belonging to Manubhai Bhikhabhai and other to the accused. It seems to us that with a view to settle their score Manubhai Bhikhabhai must have used Bhikha Nanji. We are not prepared to believe that under threat or coercion he signed Ex.46, because he was involved in number of criminal cases as well as civil proceedings. He being "court bird" it is difficult to believe that somebody may pressurize him to sign. Nothing prevented him to make grievance about it before the police or the court, which was not done by him. For the first time when his evidence was recorded before the court in 1997, after a period of almost 2 years of submitting application Ex.46 he has come out with a case that under threat he had signed such application, which cannot be accepted.

##. Having carefully gone through the evidence of the evidence of sole eye witness Bhikha Nanji we are of the considered opinion that his evidence does not inspire confidence in the mind of the Court. Thus, when there is a reasonable doubt created in the mind of the court then in our considered opinion benefit must go to the accused, that is golden principle of law.

##. Except the evidence of Bhikha there is no other evidence to connect the accused with the guilt.

##. In view of the above discussion, Criminal Appeal No.996/98 filed by the appellant-accused-Chandubhai Bhimabhai is required to be allowed and Criminal Appeal No.1067/98 filed by the State of Gujarat against the acquittal of remaining accused is required to be dismissed.

##. Accordingly, Criminal Appeal No.996 of 1998 filed by appellant-accused is allowed and the impugned judgment and order conviction and sentence dated 19.9.1998 passed by the learned Additional Sessions Judge, Junagadh in Sessions Case No.41/96 convicting the appellant-accused, Chandubhai Bhimabhai is hereby quashed and set aside and

he is ordered to be acquitted forthwith, if he is not required in any other case. Fine if paid, be refunded to the accused. As we have allowed Criminal Appeal No.996/98 filed by the appellant-accused No.4-Chandubhai Bhimabhai, Criminal Appeal No.1067/98 filed by the State of Gujarat against the judgment and order of acquittal passed by the learned Additional Sessions Judge is required to be dismissed and accordingly it is dismissed.

(B.J.Shethna, J.)

(M.S.Shah, J.)

*Pvv